**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION NO.16198 OF 2004 AND CONTEMPT CASE NO.1515 OF 2004**

Date: 19.09.2005

Between:

Khaja Qutubuddin,S/o Mohd.Yousuffiddin, age: 34 years, Contract Labour, R/o H.No.12-4-139, Moinpura Street, Siddipet, Medak District and another.

… Petitioners.

And

The Chairman & Managing Director, Central Power Distribution Company of A.P. Ltd., Singareni Bhavan, Red Hills, Hyderabad and two others.

… Respondents.

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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**COMMON ORDER**:

Aggrieved by the action of the 1st respondent in issuing proceedings dated 27.08.2004 rejecting the case of the petitioners for absorption in the respondent organization, this writ petition is filed.

Facts, to the extent necessary for this writ petition are that the 1st petitioner is a graduate and claims to have worked as contract labour from October 1996 till

01.02.1999 with one Syed Fareed Electrical, Mechanical & Civil Works, Medak. It is the case of the petitioner that he had produced a certificate in this regard counter signed by the Assistant Divisional Engineer (OP), A.P. Transco, Siddipet, that the said contractor had executed works relating to APSEB under K2 agreement from the year 1995 till 1998 i.e., upto 28.03.1998, that the K2 agreements had been certified by the Assistant Divisional Engineer (OP), APCPDCL, Gajwel, and that in the said K2 agreements, the name of the works have been specified in execution of which the 1st petitioner had been engaged as contract labour. The 2nd petitioner is also a graduate and claims to have been engaged as a contract labour from December 1994 to 02.02.1999, through one Sri A.Srinivas, contractor. It is contended that his service certificate was verified and counter signed by the Divisional Assistant Engineer (OP), Siddipet. In this case also, the contractor is said to have executed K2 agreements from the year 1995 till 1998, for works with APSEB wherein the petitioner is said to have been engaged as contract labourer. It is further stated that the Transmission Corporation of A.P.Ltd., had clarified, among other issues, that the certificate issued by the contractor is required to be signed by A.P. Transco officials duly verifying it with the reference to the agreements under which a particular contract labour was engaged prior to 18.05.1997 and check ;measurements confirmed after 18.05.1997. It is contended that both the petitioners were interviewed on 03.02.1999, and their cases were rejected on the ground that the certificate produced by the petitioners, issued by the contractor had not related to works pertaining to APSEB or AP.Transco.

Aggrieved thereby, the petitioners filed W.P.No.5903 of 2003. During the pendency of the writ petition before this court, the petitioners submitted representations/appeal dated 09.02.2004 to the respondents requesting that their cases be considered for absorption. The petitioners sought permission to withdraw the writ petition with a view to pursue the appeal, dated 09.02.2004. It is stated that this Court, by order dated 18.06.2004, dismissed the writ petition permitting the petitioner to pursue the appeal. Petitioners filed W.P.No.11370 of 2004 seeking a direction to the 1st respondent to consider the appeal preferred by them and the said writ petition was disposed of, by order dated 21.07.2004, directing the 1st respondent to dispose of the appeal dated 09.04.2004 and to communicate their order to the petitioner within four weeks from the date of receipt of the copy of the order in the writ petition. Petitioners again submitted representation on 30.07.2004 enclosing certain

documents. In the said representation the petitioners sought for orders being passed after being giving an opportunity of being heard. The respondents, vide proceedings dated 27.08.2004, rejected the case of the petitioners on two grounds:-

1). The certificate issued by the contractor dated 02.02.1999 did not specifically state that the petitioners had worked as contract labourers for the works relating to APSEB/A.P.Transco.

2). The respondents had issued memo dated 03.12.1999 which specifically provided that the certificate be duly verified with reference to the agreement under which a particular contract labourer was engaged prior to 18.05.1997 and confirming the check measurements after 18.05.1997. The certificate produced by the petitioner was not in accordance with the said memo.

Insofar as the counter signature of officials of A.P. Transco, on the service certificate is concerned, learned Counsel for the petitioner would refer to the service certificates, wherein the Assistant Divisional Engineer had indeed counter signed at the bottom of the certificate. The respondent has obviously erred in holding that the certificate has not been counter signed by the officials of A.P. Transco. The fact, however, remains that the service certificate does not indicate the works in which the petitioners had been engaged as contract labourers, nor does it give details as to whether the works in which the petitioners were engaged as contract labourers related either to works with APSEB or with A.P. Transco. The conditions stipulated in memo dated 03.12.1999 have thus not been satisfied.

Sri S.Chandraiah, learned Counsel for the petitioner, would submit that the memo dated 03.02.1999 is itself contrary to the Board proceedings in BPMs.No.36, dated 18.05.1997. Learned Counsel would refer to Section 79 of the Electricity Supply Act, 1948 to contend that since BPMs No.36, dated 18.05.1997 is a statutory regulation, it was not open to the respondents to prescribe any conditions contrary thereto by way of a memo. Learned Counsel would place reliance on Section 21 of the General Clauses Act, in support of his submission, that any amendment of the statutory regulations would necessarily have to be made in accordance with the procedure prescribed under Section 79 of the Electricity Supply Act, 1948.

Section 79 of the Electricity Supply Act 1948 reads as under:

**Power to make regulations**:-

The Board may be notification in the official gazette make regulations not inconsistent with this Act and the rule made thereudner to provide for all or any of the following matters, namely:-

a. the administration of the funds and other property of the Board, and the maintenance of its accounts;

b. the summoning and holding of meetings of the Board, the times and places at which such meetings shall be held, the conduct of business threat and the number of members necessary to constitute a quorum;

c. the duties of officers and other employees of the Board and their salaries, allowances and other conditions of service;

d. all matters necessary or expedient for regulating the operations of the Board under Section 20;

e. the making of advances to licensees by the Board under Section 23 and the manner of repayment of such advances;

f. the making of contributions by the Board under Section 24;

g. the procedure to be followed by the Board in inviting, considering and accepting tenders;

h. principles governing the fixing of Grid Tariffs;

i. principles governing the marking of arrangements with licenses under Section 47;

j. principles governing the supply of electricity by the Board to persons other than licensees under Section 49;

jj; expending sum not included in statement subjected under sub- section (1) or sub-section (5) of Section 61, under sub-section (2) of Section 62;

k. any other matters arising out of the Board's functions under this Act for which it is necessary or expedient to make regulations;

Provided that regulations under clauses (a), (d) and (jj); shall be made only with previous approval of the State Government and regulations under

clauses (h) and (i) shall be made with the concurrence of the Authority.

It is thus clear that one of the requisites for making regulations, under Section 79, is its notification in the official Gazette. Learned Counsel for the petitioner would fairly concede that BPMs No.36, dated 18.05.1997 has not been notified in the official gazette. BPMs.No.36, dated 18.05.1997 does not refer to any statutory provision under which it is made. Since the requirements, stipulated in Section 79 of the Electricity Supply Act 1948, have not been complied with, it cannot be said that BPMs.No.36, dated 18.05.1997 is statutory in nature. The other contention of the learned Counsel is also without merit inasmuch as Section 21 of the General Clauses Act would apply only to statutory provisions more particularly to the provisions of an enactment and it is only if such a power is conferred by the Act, that the power to issue any modifications thereto has to be effected following the same procedure. BPMs.No.36, dated 18.05.1997, does not have any statutory sanction and as such would akin to administrative instructions, in which event, it can always be modified by subsequent instructions issued by the respondent herein. In any event of the matter, even if BPMs.No.36, dated 18.05.1997 is said to have statutory sanction, the conditions prescribed both in BPMs.No.36, dated 18.05.1997 and in memo dated 03.12.1999 can certainly co-exist. It is well settled that while administrative instructions cannot supplant statutory provisions they can supplement and fill in the gaps therein.

In the absence of the conditions, prescribed in memo dated 03.12.1999, being complied with, the contention that similarly placed employees have been given the benefit of absorption, which are said to have been denied to the petitioners, cannot be accepted. These persons are, in any event, not before this Court. Learned Counsel would however submit that the petitioners are not aggrieved by their absorption and are merely claiming similar benefits. Even if, absorption of those candidates is contrary to the conditions prescribed, in BPMs.No.36, dated 18.05.1997 or those prescribed in memo dated 03.12.1999, the petitioners cannot claim that such an illegal benefit should also be conferred on them for it is settled law that no mandamus can be issued to perpetuate an illegality. It is only if the petitioners satisfy the requirements of BPMs.No.36, dated 18.05.1997 and those in memo dated 03.12.1999 would they be entitled to seek absorption in the services of respondent Corporation.

Sri S.Chandraiah, learned Counsel for the petitioner, would submit that the petitioners will submit a detailed representation, complying with all the requirements of both BPMs.NO.36, dated 18.05.1997 and memo dated 03.12.1999, to the respondent within two weeks from the date of receipt a copy of the order. There shall be a direction to the respondent to examine and take an appropriate decision in the matter within two months from the date of receipt of a copy of the representation of the petitioners.

Writ Petition is accordingly disposed of.

Since the interlocutory order passed in W.P.M.P.No.21146 of 2004, dated 10.09.2005 giving rise to the Contempt Case, would not survive disposal of the writ petition, the Contempt Case fails and is accordingly dismissed. No order as to costs.

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(RAMESH RANGANATHAN, J

Date: 19.09.2005

Note: Furnish copy in one week.

B/O

MRKR